

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PERCY LAVAE BACON,

Plaintiff,

v.

BRIAN WILLIAMS, et al.,

Defendants.

Case No. 2:16-cv-00101-RFB-CWH

**REPORT AND RECOMMENDATION
AND ORDER**

This action is a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a state prisoner. On August 23, 2016, this Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because Plaintiff had "three strikes" under 28 U.S.C. § 1915(g). (ECF No. 4 at 1.) The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within thirty days of the date of that order, the Court would dismiss the action without prejudice. (*Id.* at 2.) The thirty-day period has now expired and Plaintiff has not paid the full filing fee of \$400.00.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply

1 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41
2 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
3 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
4 Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d
5 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with
6 local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey a
8 court order, or failure to comply with local rules, the court must consider several factors:
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage
10 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In this case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket, weigh
16 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor
17 of dismissal, since a presumption of injury arises from the occurrence of unreasonable
18 delay in filing a pleading ordered by the court or prosecuting an action. See *Anderson v.*
19 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
20 disposition of cases on their merits—is greatly outweighed by the factors in favor of
21 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the
22 court's order will result in dismissal satisfies the "consideration of alternatives" requirement.
23 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The
24 Court's order requiring Plaintiff to pay the full filing fee within thirty days expressly stated:
25 "IT IS FURTHER ORDERED that this action will be DISMISSED without prejudice unless
26 Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this order." (ECF
27 No. 4 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his
28 noncompliance with the Court's order to pay the full filing fee within thirty days.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that this action be DISMISSED without prejudice based on the Plaintiff's failure to pay the \$400.00 filing fee in compliance with the Court's August 23, 2016, order.


ORDER

IT IS ORDERED that Plaintiff's motion for appointment of counsel (ECF No. 2) and motion to extend prison copywork limit (ECF No. 3) are DENIED as moot.

NOTICE

This Report and Recommendation is submitted to the United States District Judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this Report and Recommendation may file a written objection supported by points and authorities within fourteen days of being served with this Report and Recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the District Court's Order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: September 27, 2016


United States Magistrate Judge